

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

BEN MOSBAH SAIDI,

Plaintiff,

v.

YORK COUNTY d/b/a YORK
COUNTY PRISON, et al.,

Defendants.

CIVIL ACTION NO. 3:20-cv-00894

(KANE, J.)

(SAPORITO, M.J.)

REPORT AND RECOMMENDATION

Under the federal rules, a decedent's representative is permitted to file a motion to substitute within 90 days after service of the suggestion of death. *See* Fed. R. Civ. P. 25(a)(1). If such a motion is not filed, the action must be dismissed. *See id.* On April 20, 2021, plaintiff's counsel filed a suggestion of death, advising that her client had passed away. (Doc. 26.)

On April 21, 2021, however, we granted a previously filed motion by the plaintiff, staying this action in its entirety for a period of 90 days. (Doc. 27; *see also* Doc. 23.) By the terms of our order, the stay expired on July 20, 2021, at which time the 90-day period for filing a motion to substitute commenced. As a consequence of our order staying this case

for 90 days, a motion to substitute by the decedent's representative was due to be filed on or before October 18, 2021.

On August 6, 2021, out of an abundance of caution, we entered an order noting the substitution deadline and directing counsel to deliver a copy of that order to the plaintiff's next of kin to ensure notice of this deadline. (Doc. 29.) On August 12, 2021, counsel certified that she had delivered a copy of the order to the mother of the plaintiff's daughter, his next of kin, who had acknowledged receipt of the order. (Doc. 30.) Counsel further certified that other members of the plaintiff's family, who reside in Tunisia, were aware of the plaintiff's passing and of the order. (*Id.*)

Now, the 90-day period for filing a motion to substitute having expired without an appearance by a representative for the decedent or the filing of a motion to substitute, we recommend that this action be **DISMISSED without prejudice** pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, and that the pending motion for summary judgment (Doc. 18) be **DENIED as moot**.

Dated: October 25, 2021


JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

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NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated October 25, 2021. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified

proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

Dated: October 25, 2021


JOSEPH F. SAPORITO, JR.
United States Magistrate Judge